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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
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10/528,192

03/17/2005

Yves Dietrich

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1218 7590 08/06/2007
CASELLA & HESPOS
274 MADISON AVENUE
NEW YORK, NY 10016

EXAMINER

MILLER, BENA B

ART UNIT

PAPER NUMBER

3725

MAIL DATE

DELIVERY MODE

08/06/2007

PAPER

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Office Action Summary

Application No.

10/528,192

Applicant(s)

DIETRICH ET AL.

Examiner

Bena Miller

Art Unit

3725

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --
Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☐ Responsive to communication(s) filed on ____.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-11 is/are pending in the application.
- 4a) Of the above claim(s) 7-9 is/are withdrawn from consideration.
- 5) ☐ Claim(s) ____ is/are allowed.
- 6) ☐ Claim(s) ____ is/are rejected.
- 7) ☐ Claim(s) ____ is/are objected to.
- 8) ☐ Claim(s) ____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on ____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
 - ☐ Certified copies of the priority documents have been received in Application No. ____.
 - ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☒ Information Disclosure Statement(s) (PTO/SB/08)
Paper No(s)/Mail Date 03/17/05.

- 4) ☐ Interview Summary (PTO-413)
Paper No(s)/Mail Date. ____.
- 5) ☐ Notice of Informal Patent Application
- 6) ☐ Other: ____.

DETAILED ACTION

Election/Restrictions

Applicant's election without traverse of claims 1-6, 10 and 11 in the reply filed on 05/09/07 is acknowledged.

Information Disclosure Statement

The examiner considered the information disclosure statement (IDS) submitted on 03/17/05.

Claim Rejections - 35 USC § 112

The following is a quotation of the first paragraph of 35 U.S.C. 112:

The specification shall contain a written description of the invention, and of the manner and process of making and using it, in such full, clear, concise, and exact terms as to enable any person skilled in the art to which it pertains, or with which it is most nearly connected, to make and use the same and shall set forth the best mode contemplated by the inventor of carrying out his invention.

Claim 4 is rejected under 35 U.S.C. 112, first paragraph, as failing to comply with the enablement requirement. The claim(s) contains subject matter which was not described in the specification in such a way as to enable one skilled in the art to which it pertains, or with which it is most nearly connected, to make and/or use the invention.

The specification does not clearly describe how the protective bars of the lower end of the head are connected to prevent direct contact between the head and the reservoir.

The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

Claims 4, 5, 10 and 11 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

Regarding claim 4, it is not clear how the protective bars of the lower end of the head are connected to prevent direct contact between the head and the reservoir. Further, there is lack of proper antecedent basis for the limitations "the lower end of the head".

Regarding claim 5, it is not clear if "it" recited in line 2 refers to the tube or the lump-breaking head. Further, there is lack of proper antecedent basis for the limitation the pneumatic motor.

Regarding claims 10 and 11, there is lack of proper antecedent basis for the limitation "the lower end of the head".

Claim Rejections - 35 USC § 102

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

Claims 1-6, 10 and 11 are rejected under 35 U.S.C. 102(b) as being anticipated by Poirier Pauze et al (FR1437380) or Holland (DE1917549) or Pruessing (DE1019963) or IGS (DE3509166) or Lazich et al (US Patent 4,029,262).

The device of Poirier Pauze et al, Holland, Pruessing, IGS, or Lazich et al reads on the limitations including: re claim 1, a suction pipe including a tube (1 and 1a; or the

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figure; or figure 2; or the figure; or 12, respectively) and second end fig. 1; or the figure; or figure 2; or the figure; or 20, respectively) of the tube provided with a lump breaking head (fig. 1; or the figure; or figure 2; or the figure; or 43 and 44 respectively); re claim 2, the head including a propeller (fig. 2 of Poirier Pauze et al or 43 and 44 of Lazich et al) integral with a shaft driven by a pneumatic motor (6 of Poirier Pauze et al or 50 of Lazich et al); re claim 3, radial knives provided on the shaft (60 of Lazich et al); re claims 4, 10 and 11, protective bars at the lower end of the head [22 of Lazich et al; Note: the examiner considers the extension 22 to act as a bar since it prevents contact between the head (43 and 44) and the reservoir (26).]; and re claim 5, a handle in the form of a loop (17). It should be noted that the examiner takes the position the lump-breaking head can be detached.

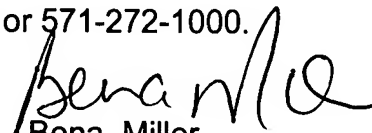
Conclusion

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Bena Miller whose telephone number is 571.272.4427. The examiner can normally be reached on Monday-Friday.

The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

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Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.


Bena Miller
Primary Examiner
Art Unit 3725

bbm
August 01, 2007